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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

AMPERSAND AVENUE, LLC, a Utah company, Plaintiff, v. TARA LYNN'S, a Utah registered DBA; SNOW CREATIVE SOLUTIONS, LLC, a Utah company; and TARA SNOW, an individual, Defendants.	**COMPLAINT** Civil Action No. 1:17-cv-00047-PMW Honorable Paul M. Warner

Plaintiff Ampersand Avenue, LLC ("Ampersand") hereby complains against defendants Tara Lynn's, Snow Creative Solutions, LLC ("Snow Creative"), and Tara Snow ("Snow"), and alleges as follows:

PARTIES

1. Plaintiff Ampersand is a Utah limited liability company having its principle place of business in Centerville, Utah. Ampersand designs, has manufactured, and sells various articles of women's clothing.

2. Tara Lynn's is a registered DBA under the laws of the state of Utah with its principle place of business at 191 E 650 S, Kaysville, Utah 84037.

3. Snow Creative Solutions, LLC is a Utah limited liability company with its principle place of business at 191 E 650 S, Kaysville, Utah 84037.

4. On information and belief, Tara Snow is a resident of the State of Utah with her residence at 191 E 650 S, Kaysville, Utah 84037. On information and belief, Snow is the active force behind Defendants' conduct, as set forth below.

Jurisdiction and Venue

1. This action arises under the trademark and unfair competition laws of the United States. 15 U.S.C. §1051 et seq.

2. This Court has original jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §1121(a) and 28 U.S.C. §§1331 and 1338, and supplemental jurisdiction over the pendent state and common law claims arising from the same nucleus of operative facts pursuant to 28 U.S.C. §1367(a).

3. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), as Snow resides in Kaysville, Utah, and Snow Creative and Tara Lynn's places of business are both in Davis County, Utah. Further, venue is proper in this judicial district in that a substantial part of the events or omissions giving rise to the claim occurred in Davis County, Utah.

General Allegations

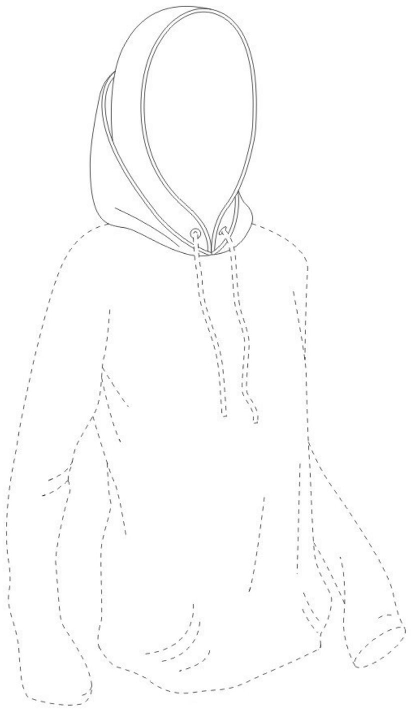
1. Plaintiff Ampersand designs, has manufactured, and sells various articles of women's clothing and accessories, including pants and bottoms, shirts and tops, skirts, dresses and tunics, jackets and outerwear, handbags, scarves, and footwear.

2. As part of its collection of women's clothing, Ampersand designs, has manufactured, and sells a unique style of women's sweatshirts having two hoods, which are branded DOUBLEHOOD.

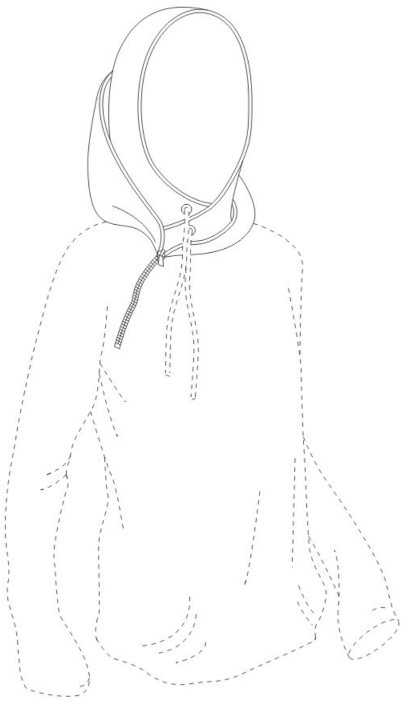
3. Ampersand's DOUBLEHOOD sweatshirts have had exceptional consumer responses and sales.

4. Ampersand has created a strong and protectable brand in its DOUBLEHOOD sweatshirts using two unique trade dress schemes, each scheme signifying Ampersand as the source of these DOUBLEHOOD sweatshirts.

5. Ampersand's first trade dress scheme ("Trade Dress 1") consists of an outerwear top having a double layer of hoods joined in a seam at the neck of the top, with the two hoods connected to a single torso piece and the inner hood has opposing eyelets located in a lower region near the neck of the top. This trade dress scheme is shown as follows:



6. Ampersand's second trade dress scheme ("Trade Dress 2") consists of an outerwear top having a double layer of hoods joined in a seam at the neck of the top, with the two hoods connected to a single torso piece. The lower portion of the inner hood forms an overlapping "V" centered to the midline of the top. There are two eyelets positioned vertical to each other on the lower portion of the inner hood, with the eyelets being off-center from the midline of the top. The lower portion of the outer hood forms an open "V" that is positioned further off-center than the eyelets. There is a false zipper that extends from the outer "V" across the chest and towards the upper arm of the top. This trade dress scheme is shown as follows:



7. Ampersand's trade dress for its DOUBLEHOOD sweatshirts has acquired secondary meaning in the eyes of the public and represents Ampersand as the source of these high-quality products.

8. Ampersand's trade dress distinguishes its goods from the goods of others in the industry.

9. Ampersand has spent substantial time and money developing valuable goodwill in the eyes of the public and women's clothing and accessory consumers for its unique fashion designs.

10. Ampersand's DOUBLEHOOD products are recognized in the industry for their excellent material construction, appealing design, and high quality.

11. Defendants have full knowledge of Ampersand's rights in and to its trade dress, including its exclusive right to use the trade dress and the goodwill associated therewith.

12. Beginning at least as early as March 6, 2014, Defendants began soliciting Ampersand to become a wholesale customer and to gain access to Ampersand's product line,

including its DOUBLEHOOD sweatshirts, when Defendant Snow wrote to Plaintiff asking, "Please let me know how to set up a wholesale account with your company."

13. Defendants' earliest purchase orders from Ampersand included Ampersand's DOUBLEHOOD sweatshirts fashioned in their protectable trade dress designs.

14. Over the course of nearly three years, Defendants placed 72 separate product orders with Ampersand, including orders for Ampersand's DOUBLEHOOD sweatshirts.

15. After building their own business using Ampersand's proprietary DOUBLEHOOD trade dress designs, Defendants began sourcing imitation products from overseas manufacturers.

16. After acquiring their own infringing source of imitation products based on the protectable Trade Dress 1 and Trade Dress 2 designs, Defendants then stopped orderin DOUBLEHOOD products from Ampersand.

17. Defendants continue to market Ampersand's DOUBLEHOOD sweatshirts by conspicuously and prominently displaying Ampersand's protectable Trade Dress 1 and Trade Dress 2 designs. However, instead of delivering genuine Ampersand DOUBLEHOOD sweatshirts, Defendants provide cheap overseas imitations of Ampersand's famous products.

18. Defendants are intentionally trading on Ampersand's valuable goodwill by attracting customers using Ampersand's famous trade dress and then duping unsuspecting consumers by providing cheap imitations.

19. Defendants' web site, www.taralynnsboutique.com, uses and or has used Ampersand's protectable trade dress in advertising its imitation products by displaying Ampersand's Trade Dress 1 and Trade Dress 2 designs.

20. Defendants also advertise their infringing goods through other forms of social media, including Facebook and Instagram.

21. Defendants are intentionally trading on the goodwill built by Ampersand for its DOUBLEHOOD line of products.

22. Defendants' infringing imitation trade dress is confusingly similar to Ampersand's trade dress.

23. Ampersand began using its trade dress prior to Defendants' first use of the infringing trade dress.

24. Defendants' use of the infringing trade dress, which is substantially and confusingly similar to Ampersand's trade dress, is a contrivance for the purpose of misrepresenting their goods as being the same as, or somehow affiliated with, Ampersand.

25. On information and belief, Defendants are using the infringing trade dress to intentionally confuse consumers into believing that the infringing goods are actually the goods of Ampersand, or are otherwise sponsored by or affiliated with Ampersand.

26. Because of the confusing similarities between Ampersand's trade dress and the infringing trade dress, consumers are likely to purchase the infringing goods mistakenly believing they are produced or sponsored by Ampersand.

27. Defendants' infringing activities are likely to cause confusion, mistake and deception among the consuming public and trade as to the origin of Defendants' infringing goods.

28. Defendants' use of the infringing trade dress is false and misleading and misrepresents the nature, characteristics and quality of Defendants' goods.

29. Defendants' sales of the infringing goods have been with full knowledge or at least willful disregard of Ampersand's exclusive rights in and to Ampersand's trade dress.

30. Unless injunctive relief is granted, Defendants will continue to infringe on Ampersand's trade dress and cause irreparable injury to Ampersand.

First Cause of Action

Trade Dress Infringement - 15 U.S.C. § 1125(a)

31. Ampersand incorporates the allegations in paragraphs 1 through 30 as though fully set forth herein.

32. Ampersand has a protectable interest in its unique trade dress and designs.

33. Ampersand's trade dress is inherently distinctive, has acquired secondary meaning, and is nonfunctional.

34. Defendants have infringed and continue to infringe on Ampersand's trade dress.

35. The Defendants' actions have caused consumer confusion, mistake, and deception as to the ownership or sponsorship of the goods it is selling.

36. By reason of Defendants' continuing conduct and infringement, Ampersand has suffered and will continue to suffer irreparable injury. Unless Defendants' acts are restrained by this Court, Ampersand will continue to suffer irreparable harm. Ampersand has no adequate remedy at law.

37. In conspiring to and actually committing these acts, Defendants acted willfully with fraud, malice, and/or a knowing and reckless indifference toward, and a disrespect of, the rights of others, and Defendants are liable to Ampersand for punitive and exemplary damages.

Second Cause of Action

False Designation of Origin - 15 U.S.C. § 1125(a)

38. Ampersand incorporates the allegations in paragraphs 1 through 37 as though fully set forth herein.

39. Defendants' use of the infringing trade dress constitutes a false designation of origin under Section 43 of the Lanham Act.

40. Consumers are being deceived by the Defendants' false designation of origin through the infringing trade dress.

41. Ampersand is suffering irreparable injury in the marketplace due to the Defendants' false designation of origin on its goods through the use of the infringing trade dress.

42. Defendants' unlawful activities injure Ampersand because Ampersand has no

ability to control the quality of Defendants' goods and their inferior products are being associated with Ampersand's quality products.

43. By reason of Defendants' continuing conduct and infringement, Ampersand has suffered and will continue to suffer irreparable injury. Unless Defendants' acts are restrained by this Court, Ampersand will continue to suffer irreparable harm. Ampersand has no adequate remedy at law.

44. In conspiring to and actually committing these acts, Defendants acted willfully with fraud, malice, and/or a knowing and reckless indifference toward, and a disrespect of, the rights of others, and Defendants are liable to Ampersand for punitive and exemplary damages.

Third Cause of Action

Unfair Competition - 15 U.S.C. § 1125(a)

45. Ampersand incorporates the allegations in paragraphs 1 through 44 as though fully set forth herein.

46. Defendants' actions constitute unfair competition under Section 43 of the Lanham Act because the infringing trade dress used to sell Defendants' goods falsely describes or misrepresents Defendants' goods as being of the same quality as Ampersand's products when they are not.

47. Defendants' unlawful activities injure Ampersand because Ampersand has no ability to control the quality of Defendants' goods and their inferior products are being associated with Ampersand's quality products.

48. Defendants are further violating 15 U.S.C. §1125(a) through falsely designating in commercial advertising or promotion the nature, characteristics and qualities of its products.

49. By reason of Defendants' continuing conduct and infringement, Ampersand has suffered and will continue to suffer irreparable injury. Unless Defendants' acts are restrained by this Court, Ampersand will continue to suffer irreparable harm. Ampersand has no adequate remedy at law.

50. In conspiring to and actually committing these acts, Defendants acted willfully with fraud, malice, and/or a knowing and reckless indifference toward, and a disrespect of, the rights of others, and Defendants are liable to Ampersand for punitive and exemplary damages.

Fourth Cause of Action

Unfair Competition - Utah Common Law

51. Ampersand incorporates the allegations in paragraphs 1 through 50 as though fully set forth herein.

52. On information and belief, Defendants' deceptive marketing and advertising are likely to confuse consumers and potential consumers as to the association of Defendants' products with Ampersand.

53. Defendants' actions constitute unfair competition under Utah common law.

54. By reason of Defendants' continuing conduct and infringement, Ampersand has suffered and will continue to suffer irreparable injury. Unless Defendants' acts are restrained by this Court, Ampersand will continue to suffer irreparable harm. Ampersand has no adequate remedy at law.

55. In conspiring to and actually committing these acts, Defendants acted willfully with fraud, malice, and/or a knowing and reckless indifference toward, and a disrespect of, the rights of others, and Defendants are liable to Ampersand for punitive and exemplary damages.

Fifth Cause of Action

Unfair Methods of Trade - Utah Code Ann. § 13-5-1, et seq.

56. Ampersand incorporates the allegations in paragraphs 1 through 55 as though fully set forth herein.

57. Defendants' actions constitute unfair methods of competition in commerce or trade because they offend public policy, they are immoral, unethical, oppressive, and/or unscrupulous, and they cause substantial injury to consumers.

58. Defendants' tortious actions have caused, and continue to cause, Ampersand to

sustain monetary losses, and other damages and injury, in an mount to be determined at trial.

59. Defendants' actions re done knowingly, willfully, with actual malice, and in bad faith, so as to justify the assessment of increased, exemplary and punitive damages against Defendants, in an amount to be determined at the time of trial.

60. Ampersand is entitled to recover three times the amount of actual damages sustained, plus court costs.

61. Defendants' tortious actions have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to Ampersand, for which Ampersand has no adequate remedy at law.

62. Ampersand is entitled to injunctive relief under Utah Code Ann. §13-5-14.

Sixth Cause of Action

Unfair Competition - Utah Code Ann. § 13-5(a)-101 et seq.

63. Ampersand incorporates the allegations in paragraphs 1 through 62 as though fully set forth herein.

64. Defendants' actions are an intentional business practice that is unfair, unlawful, and fraudulent and has materially diminished the value of Ampersand's intellectual property.

65. Defendants' actions are an infringement of Ampersand's protectable trade dress.

66. Ampersand is entitled to actual damages, costs and attorneys' fees, and punitive damages.

WHEREFORE, Ampersand prays for judgement and injunction against Defendants as follows:

Prayer for Relief

1. For preliminary and permanent injunctive relief prohibiting Defendants, their servants, agents, employees, attorneys and those persons acting in concert or participation with

them from:

a. infringing the trade dress of Ampersand's products, and

b. engaging in further acts of unfair competition.

2. For preliminary and permanent injunctive relief requiring Defendants to immediately recall all infringing products not yet in the hand of consumers and to account for all infringing products supplied to consumers.

3. For an order requiring Defendants to account for and pay over to Plaintiff all gains, profits, and advantages derived by Defendants' acts of unfair competition and infringement.

4. For an award of three times Ampersand's actual damages.

5. For an order pursuant to 15 U.S.C. §1118 that all infringing labels, signs, prints, packages, wrappers, receptacles, articles of merchandise, displays, brochures, order forms, price lists, catalogs, and advertisements in the possession or control of Defendants be recalled from the market and delivered up to Plaintiffs for destruction.

6. For reasonable attorney's fees and costs incurred in prosecuting this action.

7. For punitive and exemplary damages for the infringing acts and unfair competition in an amount not less than one hundred thousand dollars ($100,000.00).

8. For interest as provided by law.

9. For such other and further relief as is appropriate under the circumstances.

JURY DEMAND

Plaintiff requests trial by jury of all the issues in this matter.

Dated: March 28, 2017.

LEGENDS LAW GROUP

By: /s/ Stephen H. Bean

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